

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

**May 3, 2022 at 1:00 p.m.**

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1. [22-20704](#)-B-13 KATHLEEN MAGANA MOTION TO VALUE COLLATERAL OF  
[MS-1](#) Mark Shmorgon ONEMAIN FINANCIAL GROUP, LLC  
3-24-22 [[8](#)]

**Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to value the secured claim of OneMain Financial Group, LLC at \$12,919.00.

Debtor moves to value the secured claim of OneMain Financial Group, LLC ("Creditor"). Debtor is the owner of a 2015 GMC Terrain SL Sport Utility 4D ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$12,919.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

**No Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

**Discussion**

The lien on the Vehicle's title does not secure a purchase-money loan and instead was a lien against the Vehicle in exchange for a loan of \$23,430.29. Because of this, the requirement that the loan be incurred more than 910 days prior to filing of the petition is not applicable. The Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$12,919.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

**May 3, 2022 at 1:00 p.m.**

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2. [21-23809](#)-B-13 DAVID SCHEIDT  
[APN](#)-1 Seth L. Hanson

MOTION TO APPROVE LOAN  
MODIFICATION  
3-25-22 [[37](#)]

### **Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to not permit the loan modification.

Creditor Deutsche Bank National Trust Company ("Creditor") seeks court approval to incur post-petition credit. Creditor, whose claim the plan provides for in Class 1, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current \$308.94 a month to \$247.44 a month. This motion allow Creditor to obtain a "comfort order" so that the Court may find that negotiating and entering into the Loan Modification Agreement does not violate the automatic stay provision of 11 U.S.C. §362 or any other provision of the Bankruptcy Court or law. Creditor is not requesting that the court approve nor disapprove any specific terms of the Loan Modification Agreement or any incorporated documents.

The chapter 13 Trustee has filed an opposition to Creditor's motion to approve loan modification. Dkt. 43. Trustee bases his opposition on several factors:

First, the motion has been brought by the lender and Debtor has not joined in the motion. Without the Debtor joining in the motion, it cannot be determined if Debtor approves of the loan modification.

Second, Debtor has failed to file Amended Schedules I and J reflecting the loan modification. Until Trustee is able to review these documents, the impact of the loan modification on Debtor's plan cannot be determined.

Third, though the motion is titled "Motion to Approve Loan Modification", the motion specifically does not request that the court approve nor disapprove any specific terms of the Loan Modification Agreement, and instead is filed so that the Creditor can obtain a "comfort order." Accordingly, the Trustee is uncertain as to what the Creditor is asking for based on this contradictory language.

Fourth, the exhibits filed along with the motion indicate that the Loan Modification was executed by Debtor on December 29, 2021.

Fifth, Debtor has not made the payments called for by the plan under 11 U.S.C. §1325(a)(2). Specifically, Debtor is \$6,600.00 delinquent in plan payments to Trustee to date and the next scheduled payment of \$1,650.00 is due April 25, 2022.

Based on Trustee's opposition, and the fact that Debtor has not joined in this motion which was filed by the Creditor, it cannot be determined whether the post-petition financing is consistent with the Chapter 13 plan in this case and Debtor's ability to fund the plan.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

3. [22-20341](#)-B-13 RYAN CUSTODIO  
DW-1 Thomas A. Moore  
**Thru #4**

OBJECTION TO CONFIRMATION OF  
PLAN BY TOYOTA MOTOR CREDIT  
CORPORATION  
4-5-22 [[14](#)]

**Final Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

Creditor Toyota Motor Credit Corporation ("Creditor") has filed an objection to confirmation of Debtor's plan asserting that if Debtor wishes to retain the 2014 Toyota Sienna ("Vehicle"), he must amend the chapter 13 plan to provide for payment of an allowed secured claim in the amount of \$19,056.43, plus an interest rate consistent with the holding of *In re Till*, 541 U.S. 465 (2004). Creditor has filed an affidavit from Maria Rocha asserting that Debtor's last monthly payment being made on June 13, 2019, and then Creditor charged off the account on February 6, 2020. At the time of the charge off, the amount owed on the account equaled \$17,599.97.

Creditor has provided evidence of the car's value using the J.D. Power Used Car Guide indicating the clean retail value of the Vehicle is \$19,225.00. Due to the Debtor's account with Creditor being in default, and the Debtor's plan failing to properly provide for Creditor's claim, Debtor's plan does not comply with 11 U.S.C. § 1325(a).

The court's decision is to sustain the objection and deny confirmation of the plan.

The plan filed February 16, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

4. [22-20341](#)-B-13 RYAN CUSTODIO  
[RDG](#)-1 Thomas A. Moore

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
4-6-22 [[18](#)]

**Final Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in

the decision-making process or resolution of the objection. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Second, due to Debtor's failure to provide Trustee with copies of employment payment advices, it cannot be determined whether Debtor's plan is feasible and pays all projected disposable income for the applicable commitment period to Debtor's general unsecured creditors. 11 U.S.C. §1325(a)(6) and 11 U.S.C. §1325(b)(1).

Third, Debtor's plan is inconsistent concerning the payment of attorney's fees. Debtor's Disclosure of Compensation of Attorney for Debtor, dkt. 1, and Rights and Responsibilities, dkt. 5, indicate fees for services of \$4,000.00 of which \$3,500.00 was paid pre-petition and \$500.00 is due through the plan. Debtor's plan at section 3.05 indicates fees of \$4,000.00 shall be paid through the plan. Debtor's plan cannot be administered with these inconsistencies, and Debtor's plan is not feasible. 11 U.S.C. §1325(a)(6).

The plan filed February 16, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

5. [21-23653](#)-B-13 ROBERT VALENTINE AND MOTION TO MODIFY PLAN  
[RWF](#)-3 TERRY ENGELHARDT 3-15-22 [[40](#)]  
Robert W. Fong

### **Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d) (2), 9014-1(f) (1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally permit the requested modification and confirm the modified plan, and continue the hearing until May 10, 2022, at 1:00 p.m.**

Trustee filed an opposition to the Debtors' motion to modify plan stating that Debtors' plan may not be feasible. The court granted a motion to approve loan modification (RWF-1) on March 8, 2022. The feasibility of Debtors' plan is contingent on Debtors successfully completing a trial loan modification for the months of February 2022 through April 2022. Debtors have not filed a motion to approve permanent loan modification, and until the court enters an order on such a motion, it cannot be determined whether Debtors' plan is feasible.

Debtors filed a response to Trustee's opposition indicating that they have made the payments required in the trial loan modification for the months of January, February, March, and April, 2022. Debtors state they have abided by the terms of the trial loan modification and are now eligible for the permanent modification under the terms approved by the court. Debtors state they have an appointment with a Notary Public set for April 29, 2022, which will finalize and complete the permanent modification.

Based on Debtors' response, the basis for Trustee's opposition appears to be alleviated pending the Debtors filing a motion to approve permanent loan modification with the court.

The modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED CONDITIONALLY GRANTED for reasons stated in the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

### **Conditional Nature of this Ruling**

Based on Debtors' response to Trustee's opposition, the motion is granted on the condition that Debtors file a proof of approval of the permanent loan modification. Debtors have until 5:00 p.m. on Friday, May 6, 2022, to file this proof of approval of their permanent loan modification.

If the Debtors timely file this proof of permanent loan modification, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on May 10, 2022, at 1:00 p.m. will be vacated.

If Debtors do not timely file this proof of permanent loan modification, the court will hear the motion on May 10, 2022, at 1:00 p.m.

6. [20-25455](#)-B-13 GARY/SANDRA ELLENBOLT  
[JCK](#)-6 Gregory J. Smith

MOTION TO MODIFY PLAN  
3-17-22 [[48](#)]

**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

7. [22-20470](#)-B-13 JULIA NORMAN  
[AP-1](#) Gabriel E. Liberman

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
3-30-22 [[13](#)]

REVERSE MORTGAGE FUNDING LLC  
VS.

### **Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to deny the motion.

Reverse Mortgage Funding, LLC ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 24945 Ridge Crest Drive, Pioneer, California, 95666 (the "Property"). Movant has provided the Declaration of Rigoberto Corona to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Corona Declaration states that the total amount owed under the Note is approximately \$169,403.17 as of March 31, 2022. The Declaration also asserts that pursuant to Paragraph 7(A) of the Note, and paragraph 10(A) of the deed of trust, Lender may require immediate payment in full of all sums secured by the subject security instrument if: (A)(I) a Borrower dies and the Property is not the principal residence of at least one surviving borrower; or (B)(iii) an obligation of the Borrower under the subject security instrument is not performed. The Borrower in this Note passed away on May 19, 2020.

Opposition has been filed by Julia Norman ("Debtor") asserting that Movant is adequately protected. Debtor further asserts that the Movant is protected by an equity cushion on an appreciating asset during the first six months post-confirmation while Debtor prepares to refinance the Property. Further, Debtor's proposed chapter 13 plan proposes to pay adequate protection payments of \$1,2500.00 for six months at 0% interest further ensuring the status quo to Movant.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be \$169,403.17 as stated in the Corona Declaration. The value of the Property is determined to be \$285,000.00 as stated in Schedules A/B and D filed by Debtor.

### **Discussion**

In a motion brought under § 362(d)(1), the party seeking relief bears the burden on the issue of the debtor's equity - or lack thereof - in property. 11 U.S.C. § 362(g)(1). Creditor has not met this burden.

Schedules are filed under penalty of perjury. See Fed. R. Bankr. P. 1008. Some courts treat schedules as evidentiary admissions under Federal Rule of Evidence 801(d)(2). *Heath v. American Express Travel Related Services Co., Inc. (In re Heath)*, 331 B.R. 424, 431 (9th Cir. BAP 2005). Others treat them as judicial admissions. *In re Roots Rents, Inc.*, 420 B.R. 28, 40 (Bankr. D. Utah). Whatever their status, schedules carry evidentiary weight. *Perfectly Fresh Farms, Inc. v. U.S. Dep't of Agric.*, 692 F.3d 960, 969-70 (9th Cir. 2012). Therefore, for purposes of this motion only, the court relies on Schedule A/B as the only evidence of the Property's value and values the Property at

\$285,000.00.

The Ninth Circuit has held that an equity cushion of 20% provides sufficient adequate protection, even in the absence of ongoing payments. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400-01 (9th Cir. 1984). Here, Creditor claims it is owed \$169,403.17 as of March 2022. Dkt. 15. Based on the Property's \$285,000.00 value, and taking into account the Debtor's estimated cost of sale of \$22,800, that leaves equity of \$92,796.83, which in turn creates an equity cushion of 32.560%. Creditor is therefore adequately protected, even in the absence of postpetition payments.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

The motion is ORDERED DENIED for reasons stated in the minutes.

No other or additional relief is granted by the court.

8. [21-20893](#)-B-13 JARED GOODRICH CONTINUED MOTION FOR RELIEF  
[DVW](#)-1 Michael K. Moore FROM AUTOMATIC STAY AND/OR  
Thru #9 MOTION FOR RELIEF FROM  
CO-DEBTOR STAY  
3-29-22 [[70](#)]

U.S. BANK, NATIONAL  
ASSOCIATION VS.

**Final Ruling**

The Creditor and Debtor having filed, and agreed on a stipulation for adequate protection, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

9. [21-20893](#)-B-13 JARED GOODRICH MOTION TO MODIFY PLAN  
[MKM](#)-4 Michael K. Moore 3-16-22 [[64](#)]

**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor **has** filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

10. [21-22917](#)-B-13 STEVEN/EMELDA CLYMER  
[RDG](#)-1 G. Michael Williams

CONTINUED MOTION TO DISMISS  
CASE  
4-12-22 [[77](#)]

**Final Ruling**

This matter was continued from April 26, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, April 29, 2022. Debtor filed a timely response and a first amended plan with a scheduled confirmation hearing date of June 7, 2022 at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 87 and the continued hearing on May 3, 2022, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

11. [21-23144](#)-B-13 RUPERTO IDEMNE AND CONTINUED MOTION TO DISMISS  
[RDG](#)-3 JOSEPHINE MOMBAY CASE  
W. Steven Shumway 4-11-22 [[56](#)]

### **Final Ruling**

The motion to dismiss filed by the Chapter 13 Trustee ("Trustee") was continued from April 26, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, April 29, 2022. Debtors Ruperto Yanga Idemne and Josephine Navarra Mombay ("Debtors") filed a last-minute response at 4:52 p.m. on April 29, 2022.

The court has reviewed the response and its related declaration and exhibit. The court has also reviewed and takes judicial notice of the docket. See Fed. R. Evid. 201(c)(1). Oral argument is not necessary and will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 1001-1(f), 9014-1(h). The motion to dismiss will be decided on the papers.

The crux of the Debtors' response is a concession that they are unable to confirm a chapter 13 plan that satisfies an existing IRS priority tax claim of over \$132,000.00 until a dispute over tax returns is heard, and hopefully resolved in their favor, by the United States Tax Court. The response also states that a hearing before the Tax Court will not occur until sometime in the Fall of 2022. The declaration filed with the response states that a hearing before the Tax Court will be set approximately nine months after the Tax Court received the Debtors' petition on February 14, 2022, which means sometime in November 2022 at the earliest. Until that time, the Debtors ask the court to deny the motion to dismiss or continue the hearing. The court declines to do either for at least four reasons, all of which independently are cause for dismissal which is in the best interest of creditors and the estate rather than conversion. See 11 U.S.C. § 1307(c).

First, the Debtors effectively concede that they are unable to confirm a chapter 13 plan that satisfies the existing IRS priority tax claim.

Second, a Tax Court ruling in the Debtors' favor is speculative.

Third, this case was filed on September 2, 2021. If the hearing on the motion to dismiss is continued as requested, this case will have been pending for over fourteen months without a confirmed plan at the time of the continued hearing. And that assumes the Tax Court renders an immediate decision. If not, the case may very well be pending over a year and a half without a confirmed plan.

Fourth, a continuance would allow the Debtors to benefit from the protection of the automatic stay of 11 U.S.C. § 362(a) and/or the co-debtor stay of 11 U.S.C. § 1301 with the admitted inability to perform one of the most fundamental duties of a debtor in a chapter 13 case, *i.e.*, propose and confirm a chapter 13 plan.

The motion to dismiss is ORDERED GRANTED and the case is dismissed.

The court will prepare an order.